88-1396

No. ——

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

UNITED STEELWORKERS OF AMERICA,
LOCAL UNION 7533,
Petitioner,

v.

DIXIE ELECTRICAL MANUFACTURING CO.,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

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QUESTION PRESENTED*

Whether a state court may find a union liable for damages arising from the violent acts of individual union members in the course of a strike, where the union did not participate in, authorize or ratify the misconduct, and where the sole basis proffered for holding the union vicariously liable is that the union authorized, supported and financed the strike and associated picketing—conduct protected by § 7 of the National Labor Relations Act.

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* In addition to the parties listed in the caption of the case, Vernon S. Osborne and Calvin Smith were also parties to this case in the Supreme Court of Alabama.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	8
CONCLUSION	16
APPENDICES:	
A. Opinion of the Supreme Court of Alabama	1a
B. Opinion and Order of the Tenth Judicial Circuit Court of Alabama, Equity Division	11a
C. Judgment of the Supreme Court of Alabama	14a
D. Order of the Supreme Court of Alabama Denying Petitioner's Application for Rehearing	16a
E. Order of the Supreme Court of the United States Granting Extention of Time to File Petition for Writ of Certiorari	17a

TABLE OF AUTHORITIES

Cases	Page
Buchanan v. International Bhd. of Teamsters, 94 Wash. 2d 508, 617 P.2d 1004 (1980)	15
Carter-Glogau Laboratories v. Construction Laborers, 153 Ariz. 351, 736 P.2d 1163 (Ariz. App. 1986)	14
City of Artesia v. United Steelworkers of America, 87 N.M. 134, 529 P.2d 1255 (N.M. App. 1974)	15
Coates v. International Bhd. of Teamsters Local 270, 449 So.2d 662 (La. App.), *writ denied*, 450 So.2d 968 (La. 1984)	16
Ex parte Morehead, 281 Ala. 71, 199 So.2d 82 (1967)	14
International Ass'n of Ironworkers v. Blount Int'l, Ltd., 519 So.2d 1009 (Fla. App. 1987), *rev. denied*, 531 So.2d 168 (Fla. 1988), *cert. denied*, 109 S.Ct. 786 (1989)	14
International Molders Local 164 v. Superior Court, 70 Cal. App. 3d 395, 138 Cal. Rptr. 794 (1977)	15
International Union of Operating Eng. Local 675 v. Lassitter, 295 So.2d 634 (Fla. App. 1974), *rev'd on other grounds*, 314 So.2d 761 (Fla. 1975)	14
International Union, UAW v. American Metal Products Co., 56 Tenn. App. 526, 408 S.W.2d 682 (1964)	14
Knowles v. Gwynn, 224 Ga. 595, 163 S.E.2d 727 (1968)	15
NAACP v. Claiborne Hardware Co., 458 U.S. 886 (1982)	12, 13
San Diego Unions v. Garmon, 359 U.S. 236 (1959)	9
Schnabel Assoc., Inc. v. Building & Constr. Trades Council, 338 Pa. Super. 376, 487 A.2d 1327 (1985)	15
Sears Roebuck & Co. v. Carpenters, 436 U.S. 180 (1978)	9
Titus v. Takoma Smeltermen's Local 25, 62 Wash. 2d 461, 383 P.2d 504 (1963)	15

TABLE OF AUTHORITIES—Continued

Page

United Automobile Workers v. Russell, 356 U.S. 634 (1958) 10
United Construction Workers v. Laburnam Corp., 347 U.S. 656 (1954) 10
United Mine Workers v. Eastover Mining Co., 551 S.W.2d 245 (Ky. 1977) 15
United Mine Workers v. Gibbs, 383 U.S. 715 (1966) 10, 11, 12, 13
Yeager v. Teamsters Local 20, 114 LRRM 3383 (Ohio App. 1982), *rev'd in part on other grounds*, 6 Ohio St. 3d 369, 453 N.E.2d 666 (1983) 16
Youngdahl v. Rainfair, Inc., 355 U.S. 131 (1957) .. 10

Statutes and Regulations

28 U.S.C. § 1257(3) 2
Section 6 of the Norris-LaGuardia Act, 29 U.S.C. § 106 ..... 11, 15, 16
Section 7 of the National Labor Relations Act, 29 U.S.C. § 157 ..... *passim*
United States Constitution, First Amendment 12, 13

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

The United Steelworkers of America, Local 7533, hereby petitions for a writ of certiorari to enable this Court to review the judgment of the Supreme Court of Alabama in *Ex parte United Steelworkers of America, Local Union 7533, et al.*, Case No. 86-1638, entered on July 1, 1988.

OPINIONS BELOW

The as yet unreported opinion of the Supreme Court of Alabama is reproduced as Appendix A (1a-10a). The opinion and order of the Tenth Judicial Circuit Court of Alabama, Equity Division, also unreported, is reproduced as Appendix B (11a-13a). The judgment of the Supreme Court of Alabama is reproduced as Appendix C (14a-15a). The order of the Supreme Court of Alabama denying petitioner's application for rehearing is reproduced as Appendix D (16a).

JURISDICTION

The opinion and judgment of the Supreme Court of Alabama were issued on July 1, 1988. Petitioner's application for rehearing was denied by that same court on November 23, 1988. On January 10, 1989, Justice Kennedy granted petitioner's application for an extension of time to file this petition to and including February 21, 1989. The federal question presented in this petition was properly raised below and was considered and decided by the Supreme Court of Alabama (App. 3a-8a). This Court has jurisdiction to review the judgment below by certiorari pursuant to 28 U.S.C. § 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 7 of the National Labor Relations Act, 29 U.S.C. § 157, provides in pertinent part as follows:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . .

STATEMENT OF THE CASE

In this case, the Alabama state courts found petitioner, Local 7533 of the United Steelworkers of America, AFL-CIO-CLC ("the Local"), guilty of contempt and required the Local to pay damages to respondent, Dixie Electrical Manufacturing Company ("the Company"), solely on the basis of conduct protected by § 7 of the National Labor Relations Act ("NLRA"), 29 U.S.C. § 157.

In the course of an otherwise lawful strike, and after the issuance of an injunction against violence, individual members of the Local engaged in various acts that caused

damage to the Company's property and that threatened violence against certain company personnel. The Alabama courts ruled that the Local could be held responsible for those acts of individual members solely on the basis of the following:

> [T]he evidence did disclose that the union members unanimously voted to strike; the union itself maintained pickets at the plant entrance; the union maintained a tent for the strikers as protection against inclement weather; the union provided picket captains for the picket lines; the union held regular strike meetings; and the union provided strike funds, furnished by the international union, to assist with the personal needs of striking local members in need. [App.-8a][1]

The strike was a lawful economic strike, conducted after the expiration of a collective bargaining agreement between the Local and the Company. Shortly after the strike began, the Company filed a complaint in the Jefferson County, Alabama Circuit Court, alleging a number of acts by strikers that threatened the property or persons of the Company and its personnel. The complaint sought damages and injunctive relief against 15 named individuals, additional unnamed individuals, the Local, and the International Union.

The complaint was accompanied by an application for a temporary restraining order and a motion for a preliminary injunction, seeking an end to the alleged violent and threatening conduct asserted in the complaint. The trial court issued a temporary restraining order on the day the application was made and eleven days later issued a preliminary injunction. The latter, which substantially tracked the former, enjoined, *inter alia*, acts

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[1] Citations to the appendix to this petition shall be in the form "App. ——."

of violence and the spreading of tacks on or near the Company's property.[2]

A month after the preliminary injunction was issued, the Company filed various pleadings seeking to have the Local, the International, and a number of individual union-member defendants found in contempt of the temporary restraining order and preliminary injunction. Only one of the individual defendants, the President of the Local, was an official of the Local.

The trial court held a four-day hearing on the contempt allegations. The court directed verdicts in favor of the President of the Local and the International Union. The contempt citations against most of the other union members were dismissed, but some individual union mem-

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[2] The prohibitory portion of the injunction was in full text as follows:

> The Defendants and each of them are enjoined from the following acts:
>
> (a) Picketing in numbers greater than three (3) within five hundred (500) feet of any given gate at any given time.
>
> (b) Threatening any person with violence or bodily harm if such person enters or leaves the premises occupied by the Plaintiff or does any business with Plaintiff.
>
> (c) Engaging in any acts of violence of any kind against any person entering or leaving the premises occupied by the Plaintiff, doing any business of any kind with the Plaintiff or performing services for and on behalf of the plaintiff.
>
> (d) Trespassing on the premises occupied by the Plaintiff.
>
> (e) Carrying clubs, guns, or other dangerous instruments on the picket line at the Plaintiff's premises.
>
> (f) Spreading tacks on or near the entrances to the Plaintiff's premises.
>
> (g) Trespassing on the premises of the employees of the plaintiff.
>
> (h) Harassing the employees of the Plaintiff and/or their families either at the premises of the Plaintiff or at any other place. [Record in Supreme Court of Alabama at 37-39.]

bers were found guilty of contempt. And, the Local was found guilty of contempt and ordered to pay damages to the Company on the basis of the following finding:

> Defendant, United Steelworkers of America, Local 7533, is found guilty of participating in, through the actions of its officers and members, and condoning the Violations of the Court's orders which resulted in damages to tires, a broken window and certain corporate equipment inside the office in which the window was broken. [App. 12a.]

The evidence before the trial court relating to these findings can readily be summarized. After the issuance of the temporary restraining order and preliminary injunction, officials of the Local explained the nature of these orders to the union members and instructed the members to maintain a lawful and orderly strike in conformity with the court's directives. There was no evidence that the Local had any knowledge of, much less involvement in, any conduct found by the trial court to be contumacious. The only official of the Local even alleged to have directly participated in misconduct, the Local's President, was granted a directed verdict by the trial court.

Specifically, the trial court held the Local responsible for only two acts of misconduct: the throwing of a concrete block through a Company window, "which resulted in . . . a broken window and certain corporate equipment inside the office in which the window was broken" (App. 12a); and the spreading of tacks on a Company driveway, "which resulted in damage to tires" (*id.*). As to the former incident, there was no evidence as to when the incident took place, who was present, or who threw the concrete block. The contempt petition against the unknown person responsible for the incident was dismissed. Nor was there any evidence that the Local knew about, authorized or ratified the throwing of the block.

As to the second incident, at various times during the strike tacks were found on the plant driveway. Three individual defendants were accused of spreading the tacks. The petitions against two of these defendants were dismissed, and the other was found guilty of contempt pursuant to the parties' stipulation. There is no evidence that these individuals, or any other individuals, were instructed or authorized by the Local to spread the tacks, or that the Local had ratified such conduct after the fact. Apart from the fact that the defendants accused of spreading the tacks were rank-and-file members of the Local, there is no evidence of any involvement by the Local in either of these incidents.

While there was no evidence before the trial court of involvement by the Local in any acts of misconduct, there was evidence that the Local was actively involved in carrying out legitimate activities associated with the strike. Thus, the record evidence showed that the Local had authorized a strike after a unanimous vote of the members; that the Local maintained a tent to protect strikers from the weather; that the Local provided picket captains for the picket lines; that the Local held regular strike meetings; and, that the Local administered strike funds, provided by the International Union, to assist strikers in taking care of their personal needs during the strike.

The Local appealed the finding of contempt entered against the Local, and the resulting award of damages, to the Supreme Court of Alabama. The Local contended that the trial court's ruling against the Local had the effect of punishing conduct protected by § 7 of the NLRA. The Local argued that proper regard for this federal right precludes attaching vicarious liability to a union solely on the basis of conduct that is protected by § 7, and that a determination of guilt or liability on the part of the Local cannot be made without a finding that the Local actually participated in, authorized, or ratified

contumacious conduct—a finding that, the Local contended, could not be made on this record.[3]

The Supreme Court of Alabama agreed that federal law precludes holding the Local responsible for the contumacious conduct of individual members unless the Local participated in, authorized, or ratified the particular acts that were found contumacious. But the Supreme Court of Alabama went on to find the requisite "participat[ion]" and "authorizat[ion]" based solely on the Local's having engaged in legitimate strike activities protected by § 7 of the NLRA. Thus, the following is the appellate court's full description of the evidentiary justification for the finding that the Local authorized and participated in unlawful conduct:

> Having examined the record, we find that it does disclose evidence that the union itself authorized and participated in the unlawful acts of individual members.
>
> Although the president of the local union was present on several occasions at the strike site, and there was evidence that he had participated in acts prohibited by the temporary injunction, nevertheless, he was exonerated when the trial court granted a directed verdict in his favor.
>
> On the other hand, the evidence did disclose that the union members unanimously voted to strike; the

---

[3] In the trial court, the Local asserted that participation by the Local in various legitimate strike activities was protected by § 7 of the NLRA. Record in the Supreme Court of Alabama at 25, 26, 28. The Local defended against the allegations of contempt primarily on the ground that the Local did not participate in, authorize, or ratify any contumacious conduct. That the Local might be held responsible for such conduct solely on the basis of involvement in legitimate, federally protected strike activities did not surface as a possible outcome until the trial court found the Local guilty of contempt on that basis. Accordingly, the Local's appeal to the Supreme Court of Alabama was the first occasion the Local had to address directly the precise federal issue raised in the instant petition. The Supreme Court of Alabama addressed and decided the federal issue on its merits.

union itself maintained pickets at the plant entrance; the union maintained a tent for the strikers as protection against inclement weather; the union provided picket captains for the picket lines; the union held regular strike meetings; and the union provided strike funds, furnished by the international union, to assist with the personal needs of striking local members in need. [App. 8a.]

REASONS FOR GRANTING THE WRIT

This case raises a variant of an issue this Court has addressed on numerous occasions: how to reconcile the right of states to regulate violence and other matters uniquely of local concern with the right of unions and employees to engage in activities protected by § 7 of the NLRA free of state interference. While this Court has addressed that general issue in a variety of contexts, the Court has not definitively resolved the standards by which a state court may hold a union vicariously liable for the misconduct of rank and file members in the course of a labor dispute.

Here, the Alabama courts sought to deal with conduct well within the area traditionally subject to state regulation: conduct involving violence and property damage. But in pursuing this legitimate area of concern the State applied a concept of vicarious liability—holding the collective liable for the misconduct of individual rank-and-file members—that trammels the exercise of rights protected by § 7 of the NLRA.

In this case, the Local was held liable in damages for doing nothing other than engaging in normal and legitimate strike and strike-support activities. Those activities were deemed a sufficient basis by the state courts for holding the Local vicariously liable for the misconduct of individual members of the Local—misconduct that the Local had not participated in, authorized, or ratified. That holding constitutes state interference with basic federal rights and cannot be reconciled with principles implicit in this Court's prior decisions.

The activities that formed the basis of vicarious union liability in this case are the very activities normally engaged in by unions in strike situations. If, by engaging in these activities, unions could thereby be subject to monetary liability in state court every time a rank-and-file member engages in misconduct, conduct at the core of what is protected by § 7 of the NLRA would in effect be subject to state sanction. And, as a result, such protected conduct would be deterred.

The fact pattern here is a recurring one. The state courts are far from uniform in their treatment of this problem. A number of state courts have reached the same result as the courts below. A number have reached the opposite result.

The scope of federally protected rights should not vary from one state to another. This Court should resolve this issue definitively, so that state courts will have a clear and uniform instruction as to the proper scope of state regulation in this area, and so that unions and employees will not be deprived by state courts of the rights conferred by § 7 of the NLRA. This case presents an appropriate occasion for such resolution.

1. This Court has in a series of cases sought to fashion a set of principles that, on the one hand, provides the full measure of protection against state interference to conduct protected by § 7 of the NLRA and, on the other hand, leaves the states sufficient room to carry out their traditional responsibility to protect their citizens from physical harm or interference with property that may be incident to a labor dispute.

Thus, the Court has ruled consistently that state courts may not interfere with conduct protected by § 7. *See, e.g., Sears Roebuck & Co. v. Carpenters*, 436 U.S. 180, 199 (1978); *San Diego Unions v. Garmon*, 359 U.S. 236, 244-245 (1959). At the same time, the Court has recognized that § 7 was not meant to pre-empt state courts

from granting either injunctive relief or damages in cases of violence incident to a labor dispute. *See, e.g., United Automobile Workers v. Russell*, 356 U.S. 634 (1958); *Youngdahl v. Rainfair, Inc.*, 355 U.S. 131 (1957); *United Construction Workers v. Laburnam Corp.*, 347 U.S. 656 (1954). But the Court has made clear that where violent conduct and conduct protected by § 7 exist together in the context of a single labor dispute, state courts may deal only with the former and are preempted from dealing with the latter. *See Youngdahl*, 355 U.S. at 139 ("Though the state court was within its discretionary power in enjoining future acts of violence, intimidation and threats of violence by the strikers and the union, yet it is equally clear that such court entered the preempted domain . . . insofar as it enjoined peaceful picketing . . . ."). *See also United Mine Workers v. Gibbs*, 383 U.S. 715, 729-730 (1966).

As the instant case illustrates, however, even when a state court purports to be acting only in its proper realm, addressing what is clearly unprotected conduct, there is great potential for impingement upon federally protected rights if the state court applies a concept of vicarious liability that permits responsibility for the unprotected conduct to be attributed to the union based solely upon conduct that is protected. That is the problem presented here.

This Court has on two occasions addressed aspects of this problem. In *United Mine Workers v. Gibbs*, 383 U.S. at 729-735, the Court dealt with a state-law tort claim for damages resulting from violent conduct occurring in conjunction with a labor dispute. The plaintiff in *Gibbs* sought to base liability against the union in that case on a proposition of State law that a union could be held liable for violence committed by individual members pursuant to a "conspiracy" of which the union was a part.

> Under the state law, it would not have been relevant that the union had not actually authorized, partici-

> pated in or ratified the particular violence involved or even the general use of violence. It would only be necessary to show a conspiracy in which the union had a part, and to show also that those who engaged in the violence were members of the conspiracy and their acts were related to the conspiracy's purpose. [*Id.* at 733 (footnote omitted).]
>
> * * * *
>
> The trial judge charged, in accordance with the Tennessee common law on conspiracy, that the union, if a member of a conspiracy, would be liable for all acts "done in concert . . . with the common purpose, and to effect a common design," whether or not it had authorized, participated in, or ratified the particular acts. [*Id.* at 734-35 (footnote omitted).]

In these circumstances, the Court expressed the following concerns:

> The tort of "conspiracy" is poorly defined, and highly susceptible to judicial expansion; its relatively brief history is colored by use as a weapon against the developing labor movement. Indeed, a reading of the record in this case gives the impression that the notion of "conspiracy" was employed here to expand the application of state law substantially beyond the limits to be observed in showing direct union involvement in violence.
>
> * * * *
>
> The instructions to the jury also appear not to have kept the conspiracy concept within any proper bounds. [*Id.* at 732-733 (footnote omitted).]

The Court in *Gibbs* was not called upon definitively to resolve these concerns, because there, unlike here, there was an alternative ground for prohibiting a state-law damage remedy against the union. Because the state-law damage claim in *Gibbs* was brought in federal court, the requirements of § 6 of the Norris-LaGuardia Act, 29 U.S.C. § 106, were applicable to that claim: under § 6, a union cannot be held liable in federal court for the acts

of its officers, members or agents in the course of a labor dispute "except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof." The Court therefore did not have to resolve the pre-emption question that arises in the case of *state* court regulation of protected activity.

Nevertheless, the concerns stated in *Gibbs* as to whether "the conspiracy concept could be . . . kept within limits proper to the application of state tort law under the pre-emption doctrine" (383 U.S. at 735) are rooted in the basic principles that the Court has applied to define the limits of state regulation of conduct incident to a labor dispute. Those concerns are equally applicable in the present context where the question is whether, in the circumstances here, application of Alabama's concept of vicarious liability is "within limits proper to the application of state tort law under the pre-emption doctrine."

In *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886 (1982), the Court dealt with an analogous problem in a non-labor-dispute context. In *Claiborne Hardware*, the federally protected rights in question were rights of expression and association protected by the First Amendment. In the pertinent part of that opinion, the Court assumed *arguendo* that an official of the NAACP had engaged in violent or threatening conduct in the course of a boycott of certain businesses. The Court addressed the question whether the NAACP could be held vicariously liable for that unprotected conduct.

There was no finding that the NAACP had authorized the conduct in question. "Similarly, there [was] no evidence that the NAACP ratified—or even had specific knowledge of—any of the acts of violence or threats of discipline associated with the boycott." 458 U.S. at 930-931. There was a finding that the NAACP had provided certain supportive services to the boycott itself: "[T]he

NAACP had posted bond and provided legal representation for arrested boycott violators." *Id.* at 931, n.78. In these circumstances, the Court concluded that "[t]o impose liability without a finding that the NAACP authorized—either actually or apparently—or ratified unlawful conduct would impermissibly burden the rights of political association that are protected by the First Amendment." *Id.* at 931. The Court thus rejected the proposition that vicarious liability could be predicated solely upon participation in federally protected activities.

Gibbs and *Claiborne Hardware* suggest very strongly that the result reached by the Alabama courts in this case "impermissibly burden[s]" the underlying federal right in this case: the right to engage in activities protected by § 7 of the NLRA. In any event, the question needs to be put to rest by this Court. A clear standard needs to be stated, so that state courts will have instruction as to the limitations federal law places on the application of state-law concepts of vicarious liability in circumstances where a plaintiff seeks to hold a union liable for damages to persons or property arising from acts of violence by individual union members in the course of a labor dispute, and so that unions and employees will not be deprived by state courts of the right to engage in federally protected activities.

2. In this case, the Local was subjected to vicarious liability for damages because of its involvement in the following activities:

> [T]he union members unanimously voted to strike; the union itself maintained pickets at the plant entrance; the union maintained a tent for the strikers as protection against inclement weather; the union provided picket captains for the picket lines; the union held regular strike meetings; and the union provided strike funds, furnished by the international union, to assist with the personal needs of striking local members in need. [App. 8a.]

These are all normal union activities in a strike situation. It would be a rare strike where a union did not engage in some or all of these activities, or activities very similar in nature. And it is not uncommon that, without any union involvement, individual members react to the tensions and frustrations of a strike by engaging in random acts of violence.

In consequence, the fact pattern presented here is one that occurs with considerable frequency. There are numerous state court cases confronting the issue of union liability in damages for the misconduct of individual members in the course of a labor dispute, where the purported nexus of the union to the misconduct is similar to that here. These state court decisions are far from uniform. A number of state courts, like the Alabama courts in this case, have rejected claims of federal preemption and held unions liable in damages for the misconduct of their members in the course of labor disputes solely on the basis of the unions' involvement in federally protected activities associated with the disputes.[4] Other

[4] *See, e.g., International Ass'n of Ironworkers v. Blount Int'l, Ltd.*, 519 So.2d 1009 (Fla. App. 1987), *rev. denied*, 531 So.2d 168 (Fla. 1988), *cert. denied*, 109 S.Ct. 786 (1989) (holding international union liable for torts of local based on constitutional provisions indicating international "control" over local); *Ex parte Morehead*, 281 Ala. 71, 199 So.2d 82 (1967) (holding union liable for strike violence based on maintenance of picket line and tent for picketers, picket signs identifying union, appointment of picket captains); *International Union, UAW v. American Metal Products Co.*, 56 Tenn. App. 526, 408 S.W.2d 682 (1964) (holding international union liable for violence based on involvement of international representative, payment of bonds, knowledge of events and failure to repudiate). *Cf. Carter-Glogau Laboratories v. Construction Laborers*, 153 Ariz. 351, 736 P.2d 1163 (Ariz. App. 1986) holding union liable based largely on fact that union "organized, supported and directed the strike activity"); *International Union of Operating Eng. Local 675 v. Lassitter*, 295 So.2d 634 (Fla. App. 1974), *rev'd on other grounds*, 314 So.2d 761 (Fla. 1975) (holding international union liable for violence authorized by local officers absent any

state courts have reached the same result without even considering, from all that appears on the face of the decisions, whether federal law limits the circumstances in which a union might be held vicariously liable for the acts of its members in the course of a labor dispute.[5] And still other state courts have reached the opposite result on the ground that federal law prohibits such vicarious liability except where the union actually participates in, authorizes, or ratifies the misconduct.[6]

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knowledge or authorization of unlawful acts, based on international's "pervasive constitutional control" of local).

Other courts have concluded that federal law has no application to state court adjudications of strike violence, and that state courts are therefore free to apply ordinary state agency law, based simply on the fact that § 6 of the Norris-LaGuardia Act, 29 U.S.C. § 106, does not apply in state court. *See, e.g., Schnabel Asoc., Inc. v. Building & Constr. Trades Council,* 338 Pa. Super, 376, 487 A.2d 1327 (1985) (rejecting use of § 6 standard; holding union liable based on involvement in strike, knowledge of events and failure to repudiate).

[5] *See, e.g., Buchanan v. International Bhd. of Teamsters,* 94 Wash. 2d 508, 617 P.2d 1004 (1980) (union liable for acts of strike violence by members "although [union] may not know or approve of them, if such acts are done within the scope of the employment," where union authorized strike); *Knowles v. Gwynn,* 224 Ga. 595, 163 S.E.2d 727 (1968) (union liable for members' acts of picket line violence committed "in the course and scope of the business of the union and on behalf of [the] principal"); *Titus v. Takoma Smeltermen's Local 25,* 62 Wash. 2d 461, 383 P.2d 504 (1963) (union liable for picket line violence, absent specific authorization or ratification, based on normal, protected strike activities). *Cf. International Molders Local 164 v. Superior Court,* 70 Cal. App. 3d 395, 138 Cal. Rptr. 794 (1977) (holding union in contempt for unlawful picket line activity based on "participation of the international officers and the shop steward and . . . that it was a Union-sanctioned strike").

[6] *See, e.g., United Mine Workers v. Eastover Mining Co.,* 551 S.W. 2d 245 (Ky. 1977) (federal law compels holding that union is liable only for authorized or ratified acts of officers or members, and that union is not liable based on payment of strike benefits, presence of officers at picket line, signs identifying union); *City of Artesia v. United Steelworkers of America,* 87 N.M. 134, 529 P.2d

The federally protected rights at issue should not be left to the vagaries of this patchwork of state-court decisionmaking. There should be a uniform approach to the protection of these federal rights, and only this Court can establish that approach. This case presents an appropriate occasion for this Court to set forth the standards governing vicarious union liability for misconduct of individual members in the course of a labor dispute.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari to the Supreme Court of Alabama should be granted.

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1255 (N.M. App. 1974) (federal law requires holding that international union is not liable for acts of local union organizer absent evidence that "it initiated, participated in, authorized or ratified any illegal acts"). Other state courts have held that § 6 of Norris-LaGuardia is applicable in state court proceedings, requiring "clear proof" of actual authorization, participation or ratification of unlawful activity. *See, e.g., Coates v. International Bhd. of Teamsters Local 270*, 449 So. d 662 (La. App.), *writ denied*, 450 So.2d 968 (La. 1984) (under § 6 of Norris-LaGuardia, no union liability for strike violence based on legal representation, strike benefits, failure to discipline members); *Yeager v. Teamsters Local 20*, 114 LRRM 3383 (Ohio App. 1982), *rev'd in part on other grounds*, 6 Ohio St. 3d 369, 453 N.E. 2d 666 (1983) (under § 6 of Norris-LaGuardia, no union liability absent actual participation, authorization or ratification).

APPENDICES

APPENDIX A

THE STATE OF ALABAMA
JUDICIAL DEPARTMENT
THE SUPREME COURT OF ALABAMA
SPECIAL TERM, 1988

86-1638

EX PARTE UNITED STEELWORKERS OF AMERICA,
LOCAL UNION 7533;
CALVIN SMITH; and VERNON S. OSBORNE

Petition for Writ of Certiorari to the
Circuit Court of Jefferson County, Alabama

(RE: DIXIE ELECTRICAL MANUFACTURING COMPANY,
an Alabama Corporation

v.

UNITED STEELWORKERS OF AMERICA, *et al.*)

BEATTY, JUSTICE.

Petition by United Steelworkers of America, Local Union 7533; Calvin Smith and Vernon S. Osborne, petitioners, for writ of certiorari to the Circuit Court of Jefferson County, to review that court's finding of contempt of court.

A collective bargaining agreement between Dixie Electrical Manufacturing Company ("Dixie Electrical") and United Steelworkers of America, Local Union 7533, expired at or near the end of April 1987, whereupon Local Union 7533 went on strike against Dixie Electrical and established a picket line at Dixie Electrical's plant. Smith and Osborne were members of that local union.

On May 1, 1987, Dixie Electrical filed a complaint in the Jefferson Circuit Court, seeking injunctive relief and damages against United Steelworkers of America; United Steelworkers of America, Local Union 7533; Osborne; Smith; and other persons. On that same date, the circuit court issued a temporary restraining order restraining the national union, the local union, and certain individuals, including Smith and Osborne, from certain acts. Thereafter, on May 12, 1987, the circuit court issued a preliminary injunction substantially following the temporary restraining order.

On June 12, 1987, Dixie Electrical filed its verified petition for rule nisi. Following a four-day hearing on this petition, the trial court, on August 19, 1987, found Smith, Osborne, and Local Union 7533 guilty of contempt by violating the temporary restraining order and the preliminary injunction. Smith and Osborne were each sentenced to two days in the Jefferson County jail; however, the sentences were suspended on the condition that they not be found guilty of any additional violations occurring after August 14, 1987, or violations of other orders. Local Union 7533 was found guilty of:

> "participating in, through the actions of its officers and members, and condoning the violations of the Court's orders which resulted in damages to tires, a broken window and certain corporate equipment inside the office in which the window was broken. The Court finds the damages to the tires to be FIVE HUNDRED THIRTY AND 58 100 DOLLARS

($530.58), the damages to one broken window to be ONE HUNDRED AND ONE AND 80/100 dollars ($101.80), and the damage to the corporate equipment to be SIX HUNDRED NINETY THREE AND 33/100 DOLLARS ($693.33). . . . The Court orders the Defendant, United Steelworkers of America, Local 7533, to pay, to the Plaintiff within 30 days of the date of this Order, the amount of ONE THOUSAND THREE HUNDRED TWENTY FIVE AND 71/100 dollars ($1,325.71)."

The petitioners contend that there was no legal evidence on which any of them could be found guilty of contempt. Local Union 7533 also questions, on due process grounds, the trial court's failure to grant its motion to dismiss the petition for a rule nisi, as well as its liability in damages.

The certiorari standard of review is whether the law was properly applied and whether the ruling was supported by any legal evidence. *Marshall Durbin & Co. of Japser, Inc.* v. *Environmental Management Commission*, 495 So.2d 79 (Ala.Civ.App. 1986); *Smith* v. *Smith*, 380 So.2d 897 (Ala.Civ.App. 1980). See also *International Molders & Allied Workers Union* v. *Aliceville Veneers Division, Buchanan Lumber Birmingham*, 348 So.2d 1385 (Ala. 1977) (no evidence to sustain the grant of a preliminary injunction).

According to the petitioners, the law requires that a union's liability for contempt be based on evidence that the union authorized, participated in, or ratified, the contemptuous acts. Cited as authority for this proposition are *NAACP* v. *Claiborne Hardware Co.*, 458 U.S. 886, 102 S.Ct. 3409, 73 L.Ed.2d 1215 (1982), and our own decision in *United Steelworkers of America AFL-CIO-CLC* v. *O'Neal*, 437 So.2d 101 (Ala. 1983). *Claiborne* was not a contempt case, but concerned a tort action brought by a number of merchants against the

NAACP and certain individuals to obtain an injunction and damages on account of a boycott practiced against the plaintiff. The United States Supreme Court held that the conduct complained of, being peaceful and nonviolent, could not be used by the state of Mississippi as a basis for damages or be suppressed by injunction. It is significant that the United States Supreme Court, in determining that no judgment could be upheld in *Claiborne*, stated the following, 458 U.S. at 924-25, 102 S.Ct. at 3431:

> "Respondents' supplemental brief also demonstrates that on the present record no judgment may be sustained against most of the petitioners. Regular attendance and participation at the Tuesday meetings of the Claiborne County Branch of the NAACP is an insufficient predicate on which to impose liability. The chancellor's findings do not suggest that any illegal conduct was authorized, ratified, or even discussed at any of the meetings. The Sheriff testified that he was kept informed of what transpired at the meetings; he made no reference to any discussion of unlawful activity. To impose liability for presence at the weekly meetings of the NAACP would—ironically—not even constitute 'guilt by association,' since there is no evidence that the association possessed unlawful aims. Rather, liability could only be imposed on a 'guilt *for* association' theory. Neither is permissible under the First Amendment." (Footnotes omitted.) (Emphasis in original.)

That statement concerning the basis for a finding of liability of the association (or union) was followed by an even more pointed requirement for imposing liability upon the association itself, 458 U.S. at 930-32, 102 S.Ct. at 3435:

> "The chancellor made no finding that Charles Evers or any other NAACP member had either ac-

tual or apparent authority to commit acts of violence or to threaten violent conduct. The evidence in the record suggests the contrary. Aaron Henry, president of the Mississippi State Conference of the NAACP and a member of the Board of Directors of the national organization, testified that the statements attributed to Evers were directly contrary to NAACP policy. Record 4930. Similarly, there is no evidence that the NAACP ratified—or even had specific knowledge of—any of the acts of violence or threats of discipline associated with the boycott.

"To impose liability without a finding that the NAACP authorized—either actually or apparently—or ratified unlawful conduct would impermissibly burden the rights of political association that are protected by the First Amendment. As Justice Douglas noted in *NAACP* v. *Overstreet*, 384 U.S. 118, 86 S.Ct. 1306, 16 L.Ed.2d 409, dissenting from a dismissal of a writ of certiorari found to have been improvidently granted:

> " 'To equate the liability of the national organization with that of the Branch in the absence of any proof that the national authorized or ratified the misconduct in question could ultimately destroy it. The rights of political association are fragile enough without adding the additional threat of destruction by lawsuit. We have not been slow to recognize that the protection of the First Amendment bars subtle as well as obvious devices by which political association might be stifled. . . .' "

We are mindful that these principles are at variance with earlier statements contained in *Milk Wagon Drivers Union* v. *Meadowmoor Dairies*, 312 U.S. 287, 61 S.Ct. 552, 556, 85 L.Ed. 836 (1941): "It is true of a union as of an employer that it may be responsible for acts which it has not expressly authorized or which might not

be attributable to it on strict application of the rules of respondeat superior."

We recognize, moreover, the limiting language used in *United Mine Workers of America* v. *Gibbs*, 383 U.S. 715, 736-37, 86 S.Ct. 1130, 6 L.Ed.2d 218 (1966), when it discussed § 6 of the Norris-La Guardia Act, which dealt with the liability of organizations involved in a labor dispute:

> "We held in United Brotherhood of Carpenters and Joiners of America v. United States, 330 U.S. 395, 403, 67 S.Ct. 775, 780, 91 L.Ed. 973, that
>
> > " 'whether § 6 should be called a rule of evidence or one that changes the substantive law of agency * * * its purpose and effect was to relieve organizations * * * and members of those organizations from liability for damages or imputation of guilt for lawless acts done in labor disputes by some individual officers or members of the organization without clear proof that the organization or member, charged with responsibility for the offense, actually participated, gave prior authorization, or ratified such acts after actual knowledge of their perpetration.'
>
> "Shortly thereafter, Congress passed the Labor Management Relations Act, which expressly provides that for the purposes of that statute, including § 303, the responsibility of a union for the acts of its members and officers is to be measured by reference to ordinary doctrines of agency, rather than the more stringent standards of § 6. . . . The driving force behind § 6 and the opposition to § 303, even in its limited form, was the fear that unions might be destroyed if they could be held liable for damage done by acts beyond their practical control. Plainly, § 6 applies to *federal court adjudications of state tort claims arising out of labor disputes. . . .*" (Emphasis added.)

Even so, those earlier pronouncements preceded the *Claiborne* decision, which in itself was a federal review of a state injunction and damages claim, and which held that the state court could not impose liability for unlawful conduct upon an association, albeit a labor organization, for the conduct of its individual members without a finding based upon evidence that it authorized, participated in, or ratified the misconduct complained of.

Earlier pertinent decisions of this Court, *i.e.*, *Ex parte Morehead*, 281 Ala. 71, 199 So.2d 82 (1967), and *Ex parte Amalgamated Clothing Workers of America*, 286 Ala. 191, 238 So.2d 544 (1970), are consistent with *Claiborne* and *O'Neal*, which we deem the contemporary authority in this state. In *O'Neal*, a non-union employee of a struck plant brought an action against a union to recover damages for alleged acts of violence practiced upon him when he crossed a picket line and for other damages. In reversing a judgment against the union itself, this Court stated:

> "First, O'Neal asserts that the jury could have attributed the acts of *other non-joined* parties to United Steelworkers under the doctrine of *respondeat superior*. To buttress this argument, O'Neal asserts that the union's failure to repudiate acts of violence, in addition to providing legal counsel for those charged with strike related misconduct, served as a ratification of the violence. We cannot agree.
>
> "For O'Neal to recover under such a theory he must show the union authorized or ratified acts of violence. . . ."

We do not attach significance to the fact that *O'Neal* involved a tort action to recover damages while the instant case deals with a contempt proceeding involving injunctive relief and damages. *Claiborne*, on which we have relied in *O'Neal* and presently, also involved injunctive relief and damages.

Having examined the record, we find that it does disclose evidence that the union itself authorized and participated in the unlawful acts of individual members.

Although the president of the local union was present on several occasions at the strike site, and there was evidence that he had participated in acts prohibited by the temporary injunction, nevertheless, he was exonerated when the trial court granted a directed verdict in his favor.

On the other hand, the evidence did disclose that the union members unanimously voted to strike; the union itself maintained pickets at the plant entrance; the union maintained a tent for the strikers as protection against inclement weather; the union provided picket captains for the picket lines; the union held regular strike meetings; and the union provided strike funds, furnished by the international union, to assist with the personal needs of striking local members in need. See *Ex parte Morehead* and *Ex parte Amalgamated Clothing Workers of America, supra.*

Petitioners also contend that there was insufficient evidence to authorize a finding of contempt against Smith and Osborne for violating the temporary and preliminary injunctions, which prohibited, *inter alia,*

> "(a) Picketing in numbers greater than three (3) within five hundred (500) feet of any given gate at any given time.
>
> "(b) Threatening any person with violence or bodily harm if such person enters or leaves the premises occupied by the plaintiff or does any business with Plaintiff.
>
> "(c) Engaging in any acts of violence of any kind against any person entering or leaving the premises occupied by the Plaintiff, doing any business of any

kind with the Plaintiff or performing services for and on behalf of the Plaintiff.

"(d) Trespassing on the premises occupied by the Plaintiff.

"(e) Carrying clubs, guns, or other dangerous instruments on the picket line at the Plaintiff's premises.

"(f) Spreading tacks on or near the entrances to the Plaintiff's premises.

"(g) Trespassing on the premises of the employees of the Plaintiff.

"(h) Harassing the employees of the Plaintiff and/or their families either at the premises of the Plaintiff or at any other place."

Witness Carl Brown identified Calvin Smith as the person who threw three pieces of small gravel into his car as he was proceeding out of a company gate. One of these hit the back of his head and another hit one of his shoulders. Smith was also described as having pulled on the door handle and hollered for Brown to "get out of the car." As Brown drove off, he testified, Smith ran behind Brown's car beating the louvers on the rear windshield, damaging them. Brown testified that the damage was approximately $150.

Ms. Linda Berry testified to obscenities directed at her by two men at the plant fence, and of later being struck on the cheek by a rock thrown in her direction. She identified a photograph of the two men who had verbally abused her. One of these was later identified as Smith.

Mr. Charles Thompson witnessed the incident concerning Carl Brown's car and identified Smith as the perpetrator.

Vernon Osborne was identified as a man on the picket line lighting and throwing firecrackers into the back of

a pickup truck, as well as other vehicles, coming out of the company gate. Osborne was also observed yelling at a woman driving into the plant and slapping the back of her car.

These incidents of threats and harassment were sufficient legal evidence under our scope of review on which to base a finding of contempt on the part of Smith and Osborne. *Marshall Durbin, supra.* The evidence of damage to tires, windows, and corporate equipment during the demonstrations was also established, and, because of the participation of the union itself, as previously shown, it was not improper to impose liability upon it for those damages. See *Lightsey* v. *Kensington Mortgage & Finance Corp.*, 294 Ala. 281, 315 So.2d 431 (1975).

Additionally, we have examined the respondent's petition for a rule nisi and find that, in describing 17 incidents in violation of the order of May 1, 1987, and 21 incidents in violation of the order of May 12, 1987, the due process requirements of notice were satisfied.

Accordingly, under the law and the evidence, the order of the trial court is affirmed.

AFFIRMED.

Torbert, C.J., Maddox, and Houston, JJ., concur.

Almon, J., concurs in the result.

APPENDIX B

CIRCUIT COURT
TENTH JUDICIAL CIRCUIT OF ALABAMA
EQUITY DIVISION

Case No. CV 87 501-915 JDC

DIXIE ELECTRICAL MANUFACTURING COMPANY,
an Alabama corporation,
Plaintiff

vs.

UNITED STEEL WORKERS OF AMERICA, *et al.*,
Defendants

ORDER

This cause came on to be heard upon testimony taken and other evidence presented at an oral hearing on various petitions for Rule Nisi against the Defendants alleging violations of the "Temporary Restraining Order" and "Preliminary Injunction" previously issued by this Court. Before and during the hearing, counsel for the Plaintiff and Defendants reached agreements on the charges against most of the individual Defendants and a separate order is being issued to cover those agreements. At the conclusion of the Plaintiff's evidence, the Court granted the Defendants' motion for a directed verdict in favor of Defendant, Troy U. Taylor, and Defendant, United Steelworkers of America.

Based on the testimony and evidence presented, the Court ORDERS, ADJUDGES and DECREES as follows:

ONE: Defendant, Calvin V. Smith, is found guilty of one violation of the Court's order and is sentenced to two

days in the Jefferson County jail, provided, however, that the sentence is suspended on the condition that Mr. Smith not be found guilty of any additional violations arising after August 14, 1987, of any order of this Court.

TWO: Defendant, Verbon S. Osborn, is found guilty of one violation of the Court's order and is sentenced to two days in the Jefferson County jail, provided, however, that the sentence is suspended on the condition that Mr. Osborn not be found guilty of any additional violations arising after August 14, 1987, of any order of this Court.

THREE: Defendant, William F. Freeman Jr., is found guilty of one violation of the Court's order and is sentenced to five days in the Jefferson County jail, provided, however, that the sentence is suspended on the condition that Mr. Freeman not be found guilty of any additional violations arising after August 14, 1987, of any order of this Court.

FOUR: Defendant, United Steelworkers of America, Local 7533, is found guilty of participating in, through the actions of its officers and members, and condoning the violations of the Court's orders which resulted in damages to tires, a broken window and certain corporate equipment inside the office in which the window was broken. The Court finds the damages to the tires to be FIVE HUNDRED THIRTY AND 58/100 DOLLARS ($530.58), the damages to one broken window to be ONE HUNDRED AND ONE and 80/100 DOLLARS ($101.80), and the damage to the corporate equipment to be SIX HUNDRED NINETY THREE AND 33/100 DOLLARS ($693.33). The Court notes that other specific amounts of damage have been determined but restitution has been order by the District Court and these amounts are not included here. The Court orders the Defendant, United Steelworkers of America, Local 7533, to pay, to the Plaintiff within 30 days of the date of this

Order, the amount of ONE THOUSAND THREE HUNDRED TWENTY FIVE AND 71/100 DOLLARS ($1,325.71).

FIVE: The "Preliminary Injunction" issued by this Court on May 12, 1987 remains in full force and effect.

DONE and ORDERED this 19th day of August, 1987.

/s/ J. Carl
Circuit Judge

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APPENDIX C

July 1, 1988

THE STATE OF ALABAMA
JUDICIAL DEPARTMENT
IN THE SUPREME COURT OF ALABAMA

JEFFERSON CIRCUIT COURT

#CV 87-301-915 JDC

86-1638

EX PARTE: UNITED STEELWORKERS OF AMERICA,
LOCAL UNION 7533,
CALVIN V. SMITH and VERNON S. OSBORNE

Petition for Writ of Certiorari to the
Circuit Court of Jefferson County, Alabama

(Re: DIXIE ELECTRICAL MANUFACTURING COMPANY,
an Alabama Corporation

v.

UNITED STEELWORKERS OF AMERICA, *et al.*)

WHEREUPON, come the parties and the Petition for Writ of Certiorari being submitted and duly examined and understood by the Court, IT IS CONSIDERED AND ORDERED that the judgment of the Circuit Court of

Jefferson Countly be, and the same is hereby, affirmed. NO COSTS TAXED.

OPINION BY BEATTY, J.

TORBERT, CJ., MADDOX AND HOUSTON, JJ., CONCUR.

ALMON, J., CONCURS IN THE RESULT.

I, Robert G. Esdale, as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 12th day of Dec. 1988.,

/s/ Robert G. Esdale
Clerk
Supreme Court of Alabama

APPENDIX D

OFFICE OF
CLERK OF THE SUPREME COURT
STATE OF ALABAMA
MONTGOMERY

Re: 86-1638

EX PARTE: UNITED STEELWORKERS OF AMERICA, ETC., *et al.*

Petition for Writ of Certiorari to the
Circuit Court of Jefferson County, Alabama

(RE: DIXIE ELECTRICAL MANUFACTURING CO.
Appellant

vs.

UNITED STEELWORKERS OF AMERICA, *et al.*)
Appellee

You are hereby notified that the following indicated action was taken in the above cause by the Supreme Court today:

Application for rehearing overruled. No opinion written on rehearing.

Beatty, J.-Torbert, CJ., Maddox, Almon & Houston, JJ., concur.

11/23/88
nsh

/s/ Robert G. Esdale
Clerk
Supreme Court of Alabama

APPENDIX E

SUPREME COURT OF THE UNITED STATES

No. A-544

UNITED STEELWORKERS OF AMERICA,
Petitioner

v.

DIXIE ELECTRICAL MANUFACTURING COMPANY

ORDER

UPON CONSIDERATION of the application of counsel for the petitioner,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including February 21, 1989.

/s/ Anthony M. Kennedy
ANTHONY M. KENNEDY
Associate Justice of the Supreme Court of the United States

Dated this 10th day of January, 1989.

Supreme Court, U.S.
FILED
APR 7 1989
JOSEPH F. SPANIOL, JR.
CLERK

(2)

NO. 88-1396

IN THE

SUPREME COURT OF THE UNITED STATES
October Term, 1988

UNITED STEELWORKERS OF AMERICA,
LOCAL UNION 7533,

Petitioner,

v.

DIXIE ELECTRICAL MANUFACTURING CO.,

Respondent.

ON PETITION FOR
WRIT OF CERTIORARI TO THE
SUPREME COURT OF ALABAMA

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether a state court may find a union in contempt of court and consequently liable for damages arising from the contemptuous violent acts of individual union members in the course of a strike in violation of a state court injunction enjoining violent activity, where one ground proffered for holding the union liable is that the union authorized, supported, and financed the strike and associated picketing?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED.	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES.	iii,iv
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.	2,3
STATEMENT OF THE CASE	4
REASONS FOR DENYING THE WRIT.	11
CONCLUSION.	23
APPENDIX.	App. 1

TABLE OF AUTHORITIES

Cases — Page

Milk Wagon Drivers' Union Local 1753 v. Meadowmoor Dairies, Inc., 312 U.S. 287 (1941) 14

International Union, UAW Local 232 v. Wisconsin Employment Relations Board, 336 U.S. 245 (1949) 20,21

Teamsters Local 20 v. Morton, 377 U.S. 252 (1964) 19,20

United Automobile Workers v. Russell, 356 U.S. 634 (1958) 14

United Mine Workers v. Gibbs, 383 U.S. 715 (1966) 15,16

Farmer v. United Brotherhood of Carpenters & Joinders, Local 25, 430 U.S. 290 (1977) 17.18

Sears, Roebuck & Co. v. San Diego County District Council of Carpenters, 436 U.S. 180 (1978) 19

Legislative Histories:

Conference Committee House Report No. 510, 80th Cong. 2d Sess. 1, reprinted in, 1947 U.S. Code Cong. & Ad. News 1135. 16

TABLE OF AUTHORITIES - Continued

Statutes and Regulations

Section 6 of the Norris-LaGuardia Act, 29 U.S.C. § 106 10,12,15

Section 7 of the National Labor Relations Act, 29 U.S.C. § 157. 2,9,13,22

Section 101 of the Labor Management Relations Act, 29 U.S.C. § 152(13). 12,13

Section 301 of the Labor Management Relations Act 29 U.S.C. § 185. 22

Section 303 of the Labor Management Relations Act, 29 U.S.C. § 187 . . 3,22

IN THE

SUPREME COURT OF THE UNITED STATES
October Term, 1988

NO. 88-1396

UNITED STEELWORKERS OF AMERICA,
LOCAL UNION 7533,

Petitioner,

v.

DIXIE ELECTRICAL MANUFACTURING CO.,

Respondent.

ON PETITION FOR
WRIT OF CERTIORARI TO THE
SUPREME COURT OF ALABAMA

BRIEF IN OPPOSITION

Respondent, Dixie Electrical Manufacturing Company, hereby files its Brief in Opposition to the Petition for Writ of Certiorari filed by Petitioner United Steelworkers of America, Local 7533

requesting this Court to review the judgment of the Supreme Court of Alabama in Ex parte United Steelworkers of America, Local Union 7533, et al, Case No. 86-1638, entered on July 1, 1988.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 6 of the Norris-LaGuardia Act, 29 U.S.C. § 106, provides:

> No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

Section 7 of the National Labor Relations Act, 29 U.S.C. § 157 provides in pertinent part:

> Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Section 303 of the Labor Management Relations Act, 29 U.S.C. § 303 provides:

> (a) It shall be unlawful, for the purpose of this section only, in an industry or activity affecting commerce, for any labor organization to engage in any activity or conduct defined as an unfair labor practice in section 158(b)(4) of this title.
>
> (b) Whoever shall be injured in his business or property by reason [of] any violation of subsection (a) of this section may sue therefor in any district court of the United States subject to the limitations and provisions of section 185 of this title without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

STATEMENT OF THE CASE

In this case, the Alabama state courts found Petitioner, Local 7533 of the United Steelworkers of America, AFL-CIO-CLC ("the Local"), guilty of contempt and required the Local to pay damages to Respondent, Dixie Electrical Manufacturing Company ("the Company"), after several union members engaged in violent conduct which caused property damage in contravention of a standing injunction enjoining such activity, during a strike by the union. The Alabama state courts ruled that the Local could be held responsible for the acts of its members on the basis of the following:

> Having examined the record, we find that it does disclose evidence that the union itself authorized and participated in the unlawful acts of individual members.
>
> Although the president of the local union was present on several occasions at the strike site, and there was evidence that he had participated in

> acts prohibited by the temporary injunction, nevertheless, he was exonerated when the trial court granted a directed verdict in his favor.
>
> On the other hand, the evidence did disclose that the union members unanimously voted to strike; the union itself maintained pickets at the plant entrance; the union maintained a tent for the strikers as protection against inclement weather; the union provided picket captains for the picket lines; the union held regular strike meetings; and the union provided strike funds, furnished by the international union, to assist with the personal needs of striking local members in need. [App. 8a].[1]

The strike was an economic strike, conducted after the expiration of a collective bargaining agreement between the Local and the Company. Shortly after the strike began, the Company filed a Complaint in the Jefferson County, Alabama Circuit Court, alleging a number of acts by strikers that threatened the property or persons of the Company and its personnel. The

---

[1]Citations to the Alabama state court decisions shall refer to the Petitioner's Appendix as "App. _____"

complaint sought damages and injunctive relief against fifteen (15) named individuals, additional unnamed individuals, the Local, and the International Union.

The complaint was accompanied by an application for a temporary restraining order and a petition for a preliminary injunction, which also sought an end to the violent and threatening conduct alleged in the complaint. A temporary restraining order was issued by the trial court on the day of application and eleven (11) days later a preliminary injunction was issued. The preliminary injunction enjoined, among other things, acts of violence and the spreading of tacks on or near the Company's property.[2]

---

[2]The preliminary injunction prohibited the following acts:

> (a) Picketing in numbers greater than three (3) within five hundred (500) feet of any given gate at any given time.

Approximately one month after the preliminary injunction was issued, the Company moved to have the Local, the International, and a number of individual union-member defendants found in contempt of

---

[2](continued)

> (b) Threatening any person with violence or bodily harm if such person enters or leaves the premises occupied by the Plaintiff or does any business with Plaintiff.
>
> (c) Engaging in any acts of violence of any kind against any person entering or leaving the premises occupied by the Plaintiff, doing any business of any kind with the Plaintiff or performing services for and on behalf of the Plaintiff.
>
> (d) Trespassing on the premises occupied by the Plaintiff.
>
> (e) Carrying clubs, guns, or other dangerous instruments on the picket line at the Plaintiff's premises.
>
> (f) Spreading tacks on or near the entrances to the Plaintiff's premises.
>
> (g) Trespassing on the premises of the employees of the Plaintiff.
>
> (h) Harassing the employees of the Plaintiff and/or their families either at the premises of the Plaintiff or at any other place. [Record in Supreme Court of Alabama at 37-39.]

the temporary restraining order and preliminary injunction.

The trial court held a four day hearing on the contempt allegations. Several individual union members and the Local were found guilty of contempt and ordered to pay damages to the Company on the basis of the following findings:

> Defendant, Calvin V. Smith, is found guilty of one violation of the Court's order and is sentenced to two days in the Jefferson County jail, provided, however, that the sentence is suspended on the condition that Mr. Smith not be found guilty of any additional violations arising after August 14, 1987, of any order of this Court. Defendant, Verbon S. Osborn, is found guilty of one violation of the Court's order and is sentenced to two days in the Jefferson County jail, provided, however, that the sentence is suspended on the condition that Mr. Osborn not be found guilty of any additional violations arising after August 14, 1987, of any order of this Court. Defendant, William F. Freeman, Jr., is found guilty of one violation of the Court's order and is sentenced to five days in the Jefferson County jail, provided, however, that the sentence is suspended on the condition that Mr. Freeman not be found guilty of any additional violations arising after August 14, 1987, of any order of this Court.

> Defendant, United Steelworkers of America, Local 7533, is found guilty of participating in, through the actions of its officers and members, and condoning the violations of the Court's orders which resulted in damages to tires, a broken window and certain corporate equipment inside the office in which the window was broken. The Court finds the damages to the tires to be FIVE HUNDRED THIRTY AND 58/100 DOLLARS ($530.58), the damages to one broken window to be ONE HUNDRED ONE AND 80/100 DOLLARS ($101.80), and the damage to the corporate equipment to be SIX HUNDRED NINETY-THREE AND 33/100 DOLLARS ($693.33). The Court notes that other specific amounts of damage have been determined but restitution has been ordered by the District Court and these amounts are not included here. The Court orders the Defendant, United Steelworkers of America, Local 7533, to pay, to the Plaintiff within 30 days of the date of this Order, the amount of ONE THOUSAND THREE HUNDRED TWENTYFIVE AND 71/100 ($1,325.71). [Petitioner's App. 12-13a].

The Local appealed the contempt finding and the award of damages to the Supreme Court of Alabama on the ground that the Circuit Court's ruling tended to chill conduct protected by § 7 of the National Labor Relations Act ("NLRA"). The Local argued that liability should only be imposed

upon a union in cases where the Local actually participated in, authorized, or ratified the violent conduct.[3]

The Supreme Court of Alabama rejected the Local's argument and upheld the Circuit Court's application of common law agency principles in finding the Local liable for the violent acts of its members. The Alabama Supreme Court did find evidence in the record that the Local Union President had participated in acts prohibited by the temporary injunction, even though "exonerated when the trial court granted a directed verdict in his favor."[4]

Moreover, the Alabama Supreme Court found that liability for damage caused by the unlawful activity of union members was properly imposed on the Local stating:

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[3]This is the standard of liability recognized in federal court actions under § 6 of the Norris LaGuardia Act, 29 U.S.C. §106.

[4]App.8a.

> . . .the evidence did disclose that the union members unanimously voted to strike; the union maintained pickets at the plant entrance; the union maintained a tent for the strikers as protection against inclement weather; the union provided picket captains for the picket lines; the union held regular strike meetings; and the union provided strike funds, furnished by the international union, to assist with the personal needs of striking local members in need. [Petitioner's App. 8a].

REASONS FOR DENYING THE WRIT

This case is indistinguishable from the long line of state court cases which properly apply common law agency principles to determine the liability of unions for the violent and destructive acts of its members. Contrary to the position advanced by Petitioner, this case presents no novel issue of federal law which necessitates review by this Court. Rather, the Supreme Court of Alabama's decision in this case is consistent with its own precedent and that of this Court, in upholding the application of agency principles to determine union

liability in contempt proceedings for a violation of a state court injunction enjoining strike related violence.

Any lack of uniformity in state court adjudications as to the standard of union liability in such situations is merely a reflection of variations in state common law agency principles. The Petitioner apparently seeks to have this Court federalize the standard of liability in state court actions which would effectively make § 6 of the Norris-LaGuardia Act applicable to state court proceedings, a result clearly rejected by Congress when it enacted the Labor Management Relations Act (LMRA).[5]

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[5]Congress expressly rejected extending the Norris-LaGuardia explicit authorization, participation or ratification standard of liability to actions brought pursuant to the Labor Management Relations Act:

> In determining whether any person is acting as an "agent" of another person so as to make such other person responsible

Any judicially created federal liability rule would in effect: (1) override the legislative judgment that state courts are not to be bound by stringent liability rules in such cases, and, (2) upset the delicate balance of federalism existing in the labor relations area.

In prior decisions, this Court has attempted to balance the § 7 rights of workers with the interest of the states in protecting commercial enterprises and individuals from tortious conduct arising out of labor disputes, and has recognized that § 7 was not intended to preempt state courts from awarding damages and enjoining violence incident to protected activity.

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[5](Continued)

> for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

29 U.S.C. § 152(13).

See e.g., United Automobile Workers v. Russell, 356 U.S. 634, 640 (1958) (". . .the union's activity in this case clearly was not protected by federal law. Indeed the strike was conducted in such a manner that it could have been enjoined by Alabama courts.")

It is also well-established that states, when imposing liability for violent acts arising out of labor disputes, may adopt and apply common law agency principles. In Milk Wagon Drivers' Union v. Meadowmoor Dairies, Inc., 312 U.S. 287, 295 (1941), this Court acknowledged that a state may find a union liable for strike related violence committed by individual members even without a finding of participation, ratification, or authorization by union officials:

> It is true of a union as of an employer that it may be responsible for acts which it has not expressly authorized or which might not be attributable to it on strict application of the rules of respondeat superior.

The creation of a federal common-law rule which mandates the adoption by state courts of a "ratification, participation, or authorization" standard of liability in state court actions for injunctive relief and damages would have the effect of extending the standards embodied in § 6 of the Norris-LaGuardia Act to state courts, a result previously rejected by this Court and by Congress. In United Mineworkers v. Gibbs, 383 U.S. 715, 736 (1966), this Court noted that with the passage of the LMRA, the responsibility of a union for the acts of its members and officers was to be measured by reference to ordinary agency principles rather than the more stringent standards of § 6 of the Norris-LaGuardia Act:

> . . .Congress passed the Labor Management Relations Act, which expressly provides that for the purposes of that statute, including

> § 303, the responsibility of a union for the acts of its members and officers is to be measured by reference to ordinary doctrines of agency, rather than the more stringent standards of § 6. Yet although the legislative history indicates that Congress was well aware of the Carpenters decision, it did not repeal § 6 outright, but left it applicable to cases not arising under the new Act.

Cf. Conf. Comm. H. Rep. No. 510, 80th Cong. 2d Sess. 1, reprinted in, 1947 U.S. Code Cong. & Ad. News 1135, 1173 ("This provision [§ 6] in the Norris-LaGuardia Act was made inapplicable under the House bill. Section 301(e) of the conference agreement provides that for the purposes of section 301 in determining whether any person is acting as an agent of another so as to make such other person responsible for his actions, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.") (emphasis supplied).

Although a union certainly may engage in protected activity to pressure an employer to accede to its bargaining demands, incidental violence growing out of a strike which results in injury to property rights, as in the instant case, implicates compelling state interests which are

co-extensive with the federally protected concerted activity. See, e.g., Farmer v. United Brotherhood of Carpenters & Joinders, Local 25, 430 U.S. 290, 299-304 (1977) (Similar reasoning underlies the exception to the pre-emption rule in cases involving violent tortious activity. Nothing in the federal labor statutes protects or immunizes from state action violence or the threat of violence in a labor dispute, [citations omitted] and thus there is no risk that state damage actions will fetter the exercise of rights protected by the NLRA. On the other hand, our cases consistently have recognized the historic state interest in "such traditionally local matters as public safety and order and the use of streets and highways" . . .state court actions to redress injuries caused by violence or threats of violence are consistent with effective administration of the federal scheme: such actions can be

adjudicated without regard to the merits of the underlying labor controversy. [citation omitted]. . . .The occurrence of the abusive conduct, with which the state tort action is concerned, . . .suggests a potential for interference with the federal scheme of regulation. Viewed, however, in light of the discrete concerns of the federal scheme and the state tort law, that potential for interference is insufficient to counterbalance the legitimate and substantial interest of the State in protecting its citizens." [emphasis supplied]).

State court actions to enjoin incidental violence and provide redress for property damage inflicted upon employers and innocent third parties simply does not discourage a union or its members from engaging in federally protected conduct.

For example, in Sears, Roebuck & Co. v. San Diego County District Council of Carpenters, 436 U.S. 180 (1978) the Court rejected the union's argument that an employer's state court action to enjoin continuing trespass by the union was preempted because of the possibility that such an action might interfere with protected activity. There the court stated:

> . . .Nevertheless, permitting state courts to evaluate the merits of an argument that certain trespassory activity is protected does not create an unacceptable risk of interference with conduct which the Board, and a court reviewing the Board's decision, would find protected. For while there are unquestionably examples of trespassory union activity in which the question whether it is protected is fairly debatable, experience under the Act teaches that such situations are rare and that a trespass is far more likely to be unprotected than protected.

Id. at 205. See e.g., Teamsters v. Morton, 377 U.S. 252, 257 (1964) ("'[W]e have allowed the States to grant compensation for

the consequences, as defined by the traditional law of torts, of conduct marked by violence and imminent threats to the public order. [citations omitted]. . .. State jurisdiction has prevailed in these situations because the compelling state interest, in the scheme of our federalism, in the maintenance of domestic peace is not overridden in the absence of clearly expressed congressional direction. . .'"); International Union v. Wisconsin Employment Relations Board, 336 U.S. 245, 252-53 (1949) ("Congress has not seen fit in either of these Acts to declare either a general policy or to state specific rules as to their effects on state regulation of various phases of labor relations over which the several states traditionally have exercised control. [citations omitted]. However, as to coercive tactics in labor controversies, we have said of the National Labor Relations

Act what is equally true of the Labor Management Act of 1947, that 'Congress designedly left open an area for state control' and that the 'intention of Congress to exclude States from exercising their police power must be clearly manifested.'" [citation omitted])

As a practical matter, a federal liability standard for state court actions would unfairly shift the economic consequences of unprotected conduct to employers and innocent third parties. As a corollary, such a result would have the effect of encouraging union irresponsibility in the management of strike activity by removing incentives which operate to minimize incidental violence and property damage. The inequity of placing a heightened evidentiary burden on employers and innocent third parties is underscored by the fact that only the union is in a position to regulate the activities of its

members during a strike. In adopting agency principles, state courts have attempted to deter violent and destructive conduct by imposing liability on the only party capable of actually regulating the activities of union members.

Put simply, Congress through the National Labor Relations Act, as amended, and this Court, through its many adjudications of this issue, have achieved a balancing of federal and state interests in the area of labor relations. Specifically, the LMRA contains a congressional declaration that the heightened liability standard of the Norris-LaGuardia ACt was not to apply in §§ 301 or 303 actions. If, as the Petitioner asserts, the imposition of the doctrine of respondeat superior by state courts inadvertently chills activity protected under § 7, it is up to Congress to re-examine the federal interest in light of this perceived infringement.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari to the Supreme Court of Alabama should be denied.

Respectfully submitted,

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JOSEPH F. SPANIOL, JR.
CLERK OF THE COURT

March 13, 1989

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Mr. James H. Stock, Jr.
Suite 2560
One Commerce Square
Memphis, TN 38103

Re: United Steelworkers of America, Local Union 7533 v. Dixie Electrical Manufacturing Co., No. 88-1396

Dear Mr. Stock:

Your request of March 10, 1989 for an extension of time within which to file a brief in opposition to the petition for a writ of certiorari in the above-entitled case has been granted; the time has been extended to and including April 10, 1989.

Very truly yours,

JOSEPH F. SPANIOL, Jr., Clerk

By Francis J. Lorson

Francis J. Lorson
Chief Deputy Clerk

lg
cc: Bernard Kleiman
Glen Marshall Conner
Robert M. Weinberg, Esq.